

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU  
Formatted Transcribed Meeting Minutes

Date and Place: May 13, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael A. Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A. S. DeCaires, Investigator  
Lisa P. Parker, Legal Clerk III  
Kristine I. Bigornia, Legal Clerk I  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Keoki Kerr, Reporter, Hawaii News Now

Absent: Stanford Yuen, Commissioner

Transcriber: Gloria C. Takara

## **I. CALL TO ORDER**

Chair Chen: Hi, welcome. Welcome to the May 13<sup>th</sup>, 2015 Honolulu Ethics Commission open meeting. Do we need to go around introducing ourselves for the record.

All Commissioners: No.

EDLC Totto: The usual suspects are here.

## **II. FOR DISCUSSION: STATUS OF THE MINUTES OF THE OPEN SESSION OF THE APRIL 22, 2015 MEETING**

Chair Chen: Okay. All right. Item 2 for discussion, status of the minutes of the open session of April 22<sup>nd</sup>, 2015 meeting.

EDLC Totto: Just wanted to let you folks know, excuse me. Again, because we got so much work on-going that I've had to make a decision about whether we're to going to spend couple of days—actually, it probably takes two to three days boil the discussions down to minutes, and instead we're using staff for other projects, but we are having a transcriber transcribe the meeting, so that we will have full information should anybody either in public you folks or staff need to go back and look at anything.

Chair Chen: Okay.

EDLC Totto: We hope to change that at some point. But—

Investigator DeCaires: State ethics in the Big Island just deferred the case of—

Lilly: They did what?

Amano: Deferred it?

Investigator DeCaires: They just deferred it until the State Attorney General was done investigating, they're not going to hear the case.

### **III. OLD BUSINESS – Confirming the Dates and Times for the June, July, August and September Meetings.**

Chair Chen: All right. Item 3, Old Businesses, confirm date and times for the future meetings. The first one is June 24<sup>th</sup>, 2015. Does that remain, all right?

Amano: Yeah.

Amano: Yes.

Chair Chen: Okay. July 23<sup>rd</sup>.

Amano: Yes.

Lilly: Yeah.

Chair Chen: That's okay with everybody? And then August 29<sup>th</sup>.

Yuen: August--

Amano: I can do August 19<sup>th</sup>.

Chair Chen: That's a Saturday.

Lilly: No, August 19<sup>th</sup>.

Chair Chen: Oh, I'm sorry, 19<sup>th</sup>. Okay.

Lilly: I won't be able to attend. That was always the case.

Chair Chen: Were there others?

EDLC Totto: Is that still—I know you had a two-week block you were concerned about—

Lilly: No. Actually I could attend that week but not that day. That's changed. I was going to be in arbitration on Maui, now that's turned into a mediation that day here.

EDLC Totto: So, if we were to do a day or two before, would that be okay?

Lilly: Yes, yeah. Either side would be fine.

Chair Chen: Okay.

Marks: This is for August?

Lilly: Yes, August 19<sup>th</sup>.

Chair Chen: I can do August 20<sup>th</sup>, the Thursday.

Yuen: He's going to be gone.

Lilly: No. I was going to be gone on the 20<sup>th</sup>, but now I'm going to be here.

Amano: I can't do the 20<sup>th</sup>.

Chair Chen: I can do Friday, August 21<sup>st</sup>.

Amano: 21<sup>st</sup> is okay with me.

Chair Chen: Friday, August 21<sup>st</sup>, does that work for everybody?

Yuen: So far so good.

Chair Chen: Okay. Let's amend it to August 21<sup>st</sup>.

Suemori: Hi, I'm here [just arrived]

Amano: Can you check your calendar real quick, August 21<sup>st</sup>.  
[referring to Suemori]

Chair Chen: We're changing the August 19th meeting to August 21<sup>st</sup> same time, 11:30.

Suemori: Probably I can make it. My son goes back to college, and I'm gone.

Amano: That date?

Suemori: Around there. I just got off the phone with him, and he's flying back and he's not concentrating. So let's just do 11:30 the 21<sup>st</sup> is fine.

Amano: Yeah, yeah, okay.

Chair Chen: Okay, good. Do we want to go one more month, September 23<sup>rd</sup>?

Amano: Yes, good.

Lilly: I'll be long gone. I'll be in Europe.

Amano: Oh, okay, so not good.

Suemori: The 23<sup>rd</sup>?

Chair Chen: Actually, I'm not sure if I can do that one either.

Lilly: I'll be hiking.

Suemori: It's hot, you know.

Lilly: No. This will be in the alps.

Amano: Can you connect by telephone? Just kidding.

Marks: Sir, we're saying yes or no to the 23<sup>rd</sup>?

Lilly: I'll be gone for most of that month. I leave around the 8<sup>th</sup>.

Suemori: We got to forget him. Just have a majority without him.

Amano: Okay.

Chair Chen: We don't have Stanford. We can put it down preliminary 23<sup>rd</sup> and then—

Seumori: But we're not here on the 30<sup>th</sup>, right?

Amano: Yeah, we're not here.

Lilly: I'm back the last week.

EDLC Totto: Of September?

Amano: I'm not good on the 30<sup>th</sup>.

Suemori: We're not here.

EDLC Totto: For a long time period or—

Suemori: A week.

EDLC Totto: A week. Okay.

Chair Chen: That whole week?

Suemori: Yeah. 23<sup>rd</sup>—Let's just do the 23<sup>rd</sup> and hopefully we have a quorum.

Chair Chen: And next meeting we can find out if Stanford can do that.

EDLC Totto: Okay. Yeah, we'll let him know.

#### **IV.A. NEW BUSINESS – For Discussion: Staff Report**

Chair Chen: All right. Thank you. Moving on to new business, Item A for discussions, staff report. Do you want to do that?

EDLC Totto: Yeah. Just real briefly on the complaints and request for advice.

Amano: You know you got a small typo, yeah.

EDLC Totto: Where's that?

Amano: Just above FYI '15 total. It should be March 31<sup>st</sup>, 2015, I think.

Chair Chen: 31<sup>st</sup> 2015.

EDLC Totto: Yes, thank you.

Amano: You're welcome.

EDLC Totto: Okay. So, July 1, 2014 through March 31, 2015, got it.

Amano: Yeah.

EDLC Totto: The main decrease was in FY14 total. You see that we were able to close a net 15 cases there. And, again, those were mostly investigations. So, we've been pushing hard to close as many as those as we can and still not get overwhelmed by what happens in this particular FY15. That's all what I wanted to say about that.

Amano: May I comment? It looks like our statistics are a little bit lower this year then they were last fiscal year?

EDLC Totto: Yeah, I looked at that. I think we're about 50 less, and I think most of those are request for advice. But we also have a few less complaints. And if you were going to ask me why? I don't know.

Chair Chen: Maybe because of the training.

EDLC Totto: Pardon me?

Chair Chen: Maybe because of the training that's being done?

EDLC Totto: Usually training stimulates.

Chair Chen: Oh, stimulates

EDLC Totto: Questions and concerns. But it also could be, I don't know how many—It has been the policy of the cabinet to no longer contact us for ethics advice because the formal managing director had said contact corporation counsel. So, that could be the difference—

Silva: You don't know how many they're handling?

EDLC Totto: No.

Silva: They know how much we handle?

EDLCT Totto: Yeah.

Amano: Because it's about a 10% drop if it continues on this same pattern.

Chair Chen: Okay. Website.

EDLC Totto: Yeah. I didn't get the automatic email from our website statistics, so I don't know what happened and I will check on that. Actually there's a bigger typo. It should be July 1, 2014 through April—Is there 30 days in April?

Chair Chen: Yes.

Amano: Yes. Oh, oh, okay—I thought you were just giving it to us by the quarters.

EDLC Totto: No, my mistake.

Amano: Got it. So, the drop would even be bigger.



EDLC Totto: Uh-huh. Let's see, Item No. 3, Status of FY15, 16 and 17. I really don't have anything to discuss right now, but FY15, I know we will be under our budget, and if you have questions I'll be happy to answer them.

For 2016, there was another committee draft of the budget bill which would've removed \$7,000 from our budget, but those potential cuts were withdrawn. So, we're almost 100% of what we were funded.

Amano: That's good, huh?

EDLC Totto: Yeah. For 2017, you know, we talked some about the budget request last month, and I wanted to put together some— This is just a basic load statistic. This is the type of thing we try to—Every year we try to put something like this together, so we contact the State's Ethics Commission, and you'll see that that the workload is relatively similar by lawyer any way for the various items. The biggest difference being—They don't use an investigator in the rare times. They tend to generate their cases from their lawyers and if they need investigation then they'll have their lawyers do the investigation.

They also limit quite a bit the number of cases that they look at in terms of the complaints requiring investigation. We drop off of about, I'd say about 50 a year and they drop off a lot more than that. But the major focus here is the complaint requiring investigation per investigator and that becomes even more relevant when you look at the bottom chart, and you'll see that we contacted the AG and their investigators, the Police Commission, the Professional Standard's office of HPD. That's what they now call internal—what they used to call Internal Affairs and then our office.

So, you can see that if you go down to the administrative investigations per investigator, we have a quite a major increase and huge workload compared to the others. And that's because the others, at least appear to me have sufficient resources so that they can do

that. And, again these are only administrative investigations. We made sure that the AGs and PSO remove any criminal investigations because that would be an unfair comparison.

Silva: I got a question?

EDLC Totto: Sure.

Silva: We look at total administrative investigators, we show the state has six, but on the top it shows zero. How come?

EDLC Totto: No, no, the bottom chart is the AG—

Silva: Oh, okay.

EDLC Totto: ...and the top chart is the State Ethics Commission.

Silva: Got it, got it.

EDLC Totto: So, we're trying to find out who in the state does similar work to us and that's what it looks like. So, this would be a reason to ask for an additional investigator or two if we assume that maybe average is about 25 investigations per administrative investigator. But that's just FYI.

Chair Chen: For 2017?

EDLC Totto: Yeah, this would be focused for 2017 budget. Any other questions or comments on that? [no response] Okay.

The fourth item is Status of Investigative Services for the Commission. We have Letha on contract through June 30<sup>th</sup>. What's going to happen after that is kind of a question mark? We should be getting a list of eligible civil service candidates. I'm not sure when that's going to come. I've been told by the end of this month, but then I was also told that we have to wait until after the prosecutor's office go through their list and goes through their

process of trying to hire. So, I don't know might add another month, six weeks, depends on how quickly they go. And then we have to see—I don't know who's going to be on that list or what quality the people will be.

So, it's up in the air at this point. By mid-June if we can't, if it doesn't look like we're going to fill the position by July 1, one option will be to see if we can get a dispensation from Human Resources and Corp and BFS to have another 89-day contract with Letha.

Chair Chen: Okay.

EDLC Totto: Assuming Letha wanted to do that.

Item 5, as you all filled out. We have the mandatory annual financial disclosure, which is sometimes a teeth-pulling exercise, the staff has been very good, and I can say as of this time everybody has filed except for one person.

Suemori: Is it me?

EDLC Totto: No, no, you filed. I mean in the whole City.

Suemori: This is a record?

EDLC Totto: But I'll tell you the difficulty with this, you know, I'm more of a "hey, we notified you, we notified you're late, you notified you were late, and we notified you the fourth time you were late, you can now just come and pay a fine." And, we haven't done that yet because unlike me, staff is too kind.

The other thing we do which is usually hopeful is we contact the Council Chair and the managing director and say, "these are the folks that haven't filed yet." And we let them break the (inaudible). And, they've been pretty good this year. It's tough for just a couple of people to keep calling. After a while it's like, they get pretty non-responsive. And, I think this year we had,

and I'm not quite sure, but about 475 financial disclosures annuals that needed to come in.

Ethics training for board and commission members DVD available by the end of the month, and if we can send it to you, we will or we'll just let you know that you can come in here and watch it here or whatever.

And that's it for the Administrative News or as we call it Staff Report now.

#### **IV.B. NEW BUSINESS – For Discussion: Report of the Permitted Interaction Group Regarding the Commission Lawyers' Salaries and Recommended Next Steps**

Chair Chen: Okay. Item B, for discussion Permitted Interaction (inaudible) Report regarding Lawyer's Salaries and recommended next steps. That would be Vice Chair Lilly and Commissioner Amano. Like to update us?

Lilly: Well, we had a very good meeting with Ray Soon at his office at Honolulu Hale. He couldn't commit to any particular thing about Salary Commission. We represented that our two attorneys would like to have their salary under the Salary Commission. That's the direction from this Commission. And, he couldn't commit because he had to go back and ascertain what the position might be. But we felt that, I think he was receptive. He was supposed to get back to us and tell us what the process was for applying to the Commission. And, apparently Commission doesn't have executive director at the moment.

EDLC Totto: Yeah, I guess, not yet.

Lilly: So, they're still assessing that, but there's going to be some kind of process for you to submit a white paper. Now, whether it's directly from you to the Commission or whether it's through the City, that hasn't been determined. But we need to have a white

paper that says what it is that we want. And, it will affect at least two of the chartered divisions. One, is the chartered provision on the Salary Commission that would include you under the Salary Commission and also changing the Ethics Commission's provision, says "we are responsible for setting the legal counsel's salary." So, those two things are going have to be amended.

And, we need to get that in by July?

Amano: Well, I think he anticipates that the Charter Commission will be finalizing its own plans by the end of July and then taking it out to the public from August forward.. So, they have their pig, believe it or not.

EDLC Totto: There are a lot of pigs running around.

Amano: Yeah, there are. And, so that pig is in charge of looking for the executive director. And, he expects—So, he named—There are 10 people on the Charter Commission. Half dozen that he could recall including John Waihee, Rick Tsujimura, Guy Fujimori, Mike Broderick, Mrs. Ray Soon. I don't know who is, but his wife, and Jessie Souki. Jessie Souki is the Chair of the Charter Commission. So, he contacted Jessie afterwards and then Jessie told them about the pig and they're anticipating a report back from the pig next week, the 21<sup>st</sup>. So that being the case, Souki said they'll know more by then. The City has not decided to present its own Charter recommendation, change recommendations. They may do it in bulk and they might invite us to join them, depends, or they may have to do it individualized. And, we might do it individualized anyway. So, each one of the changes is going to require a white paper, which he wants to have one to two pages and, of course, it has to reference which sections of the charter are to be amended in our case when we add our ALC and EDLC to the Salary Commission. Two pieces have to be amended that's our own piece, the Ethics Commission as well as the Salary Commission. That's all. He said two pages not more than that. And really it's

the reasons for why we want to have our two people in the Salary Commission, which I think are very sound.

Mike and I represented to Mr. Soon that our Ethics Commission supports this idea, and we want it. And, I hope that's accurate.

Lilly: We passed a resolution.

Amano: So, that's good.

Lilly: He said he didn't they would oppose it. But, I said we need you to support it.

Amano: So, that part we're going to be in touch him. Mike will be in touch with him and we'll work together on that. But nonetheless, we need to be prepared to either be part of them or do it alone, either way. If they chose not for us to be part of them, we're going to do it alone. We may chose to do it alone anyway, which we can do, I think.

Lilly: So, you didn't work on that white paper?

EDLC Totto: I think I've already done it.

Amano: Yeah.

EDLC Totto; But happy to put that together—

Amano: Great.

EDLT Totto: ...and we'll do our best to get it to you folks for the June meeting, so it'll be well ahead of whatever deadlines they set.

Amano: Yeah. So, we're prepared to walk it all the way through.

Chair Chen: Sounds like they're waiting from Mr. Soon for process.

Amano: Souki supposed be back to him after next week.

Lilly: Yeah. They haven't ascertained where it is yet.

Chair Chen: Okay.

Amano: So, we are small fish. They got a lot of big fishes, and I think that process is going to be very important to Soon, who has to put his whole package together. We're just really a small part. But we're tag along.

Chair Chen: Okay.

EDLC Totto: One of the most difficult things for the Charter Commission is taking the show, so to speak. Once they get their 5, 10, 40, I don't know how many requests for Charter Amendments, they have to do some determination as to what they think they should take out for the public and the public hearings on that around the island and so on and start that give and take process. It can take a lot of time especially—I'm not suggesting ours is going to be a big political or emotional issue, but some Charter Amendments may be, so that's where it takes a lot of time.

#### **IV.C. NEW BUSINESS – For Action: Request for a Motion to Approve and Adopt a News Release Policy**

Chair Chen: Okay. Thank you. Moving on to Item C for action, a Request for Motion to Approve and Adopt the News Release Policy and then we can discuss. So, can I have a motion, please?

Silva: So move.

Lilly: You made a motion?

Silva: I said so move.

Lilly: Second.

Chair Chen: Okay. So, we can discuss. There's two policies actually. One proposed by the Commission staff and then one that Commissioner Amano, I believe yesterday distributed?

Amano: Yeah.

Lilly: Which was that one?

Amano: Open to—

Seumori: Is that this one?

Chair Chen: Looks the same; yeah.

EDLC Totto: It says "Draft Honolulu Ethics Commission Media Policy" on the top.

Chair Chen: And then the one with the logo is the staff one.

Suemori: That one I don't have.

Chair Chen: This one you don't have; okay. So, Commissioner Amano would you like just to talk us through your proposal?

Amano: Well, I set out a policy for the statement which follows, I think which tracked our mission and tracks everything we have out there including in website. And then I set out, I researched some different kinds of media policies but I thought this was the best compilation of a good procedure. You know, our media interaction is very, very important. Because once you put it out there it's almost like digital. It's not gonna go away. We have to be careful with how we put it out there and what we put out there. And, I think it's very important to have people vote proactive and reactive because sometimes we do get if someone else said



something rather or something has become newsworthy, and we feel the need to react.

But other times we have a lot of important information that we want to get out there, so I hope this policy would cover both kinds of activities. It's very general. I think it's pretty clear, and I try to blend in what the staff had proposed which you see in Item No. 6 and also Item No. 5.

Chair Chen: So, what do you think of this (inaudible) differences between yours and the staff's version?

Amano: The biggest difference is that we before we have a media release of any kind, which would be the responsibility of our executive director, it would be reviewed with our Chair from the Commission, if possible. If time does not permit that then there's another way to do it. It's in the policy as well. That's the biggest difference.

Chair Chen: Okay. I didn't quite understand No. 2, which was "under no circumstances shall any media, communication engage, etc., etc., etc., or interpret or comment on any decisions or advisory opinions. I just wonder about under no circumstances to air concerns (inaudible) regarding the operations of the Ethics Commission. If that's maybe too broad because, I guess, how practical is that? Operations of the Ethics Commission could be—

Suemori: But it concerns of grievances.

Chair Chen: Yeah. I mean, it could just even be like this is the budget and you wouldn't be able to comment on the budget.

Suemori: I don't think publicly. Should we publicly?

Chair Chen: Well, I think that for example when there's council meetings and they have people go and talk about budget or

whatever the case may be. I'm just wondering if that's just so broad, is it practical? What's the purpose behind that is just to make sure—

Suemori: It's a boundary.

Amano: Yeah.

Chair Chen: So, I guess, this is under no circumstances at all? It seems, does it seem particularly practical—

Suemori: It's under no circumstances how any media communications. So, it's media communication. If he's in the City Council and the Council is having a meeting and the media is there. That's a media communication. That's a communication with the Council that's being covered by the media. But it's not media communication. It's not directly saying, "here, this is what I'm saying." He's doing it in the Council, Mayor, whatever or us.

I think it's just, I mean, I think a boundary to not submit to the newspaper or the TV a bitch about A, B or C is not a good thing. Unless, you guys agree, disagree. We should go into the media and submit our bitch. But, I don't think so.

Lilly: I don't know. First of all, I don't what that is, and I don't—

Suemori: There isn't any.

Lilly: ...how to define it.

Suemori: That's why I'm just saying. We just want to boundary or should we have no boundary?

Lilly: That's why really Judge Amano's initial suggestion do we have a policy and that's what they had worked up a draft.

Suemori: Right.

Lilly: Now, judge has a different (inaudible). I'm concerned about 2. 2 seems—I'd be hard pressed if I was in Chuck's position to figure it out when it was I couldn't talk with the media or not when given No. 2. Secondly, and I don't mind the idea that if he's going to issue a press release that he contact A, B or me or if we're not around somebody on the Commission to look at the press release. To me I don't think that's bad. But this one about them (inaudible) about getting prior written approval—

Amano: That's anybody else; not him. The authorization comes from him, if it's anybody else but him.

Lilly: Oh. So, okay. So, we don't communicate and the staff doesn't—

Amano: If we decide that an Ethics Commissioner, Mr. Silva, for instance is the appropriate person to speak on something that we want to notify the public about then that's a decision that all of us make together or the EDLC makes. Then he just gives a written authorization to Mr. Silva and he goes out and does it.

Suemori: So we don't have four Commissioners all talking their opinions and going to the media.

Amano: Yeah. It's controlled and it's controlled by the EDLC.

Lilly: Is it a written approval or can they call Acadia, say, "hey, I got contacted by Keoki Kerr, what do I do?"

Seumori: I think you should have written (inaudible) to protect him. What if she says, "well, I was (inaudible)". For him, I think we should cover that.

Amano: Because we have a written policy, it's better that we have clear record of what transpired and that its gone through the procedure. We leave it all in Chuck's hands.

Lilly: Does the email constitute written communication?

Amano: Yeah, sure, why not.

Suemori: Texting does.

Lilly: Texting.

Lilly: I don't care for Item 2.

Suemori: That's another thing. So, then—

Amano: Well, there's two parts to Item 2.

Suemori: Any circumstances (inaudible).

Amano: So, it's really (inaudible) concerns and grievances regarding the commission. That's really what it is.

Chair Chen: So, the interpreter comment on under no circumstances to interpret or comment.

Amano: Yeah, that's a separate issue. Interpret or comment on our decisions or advisory opinions. Those have to speak for themselves. That's why I put it under that way.

Marks: And that tracks what the staff drafted, right?

Amano: Yeah, what we approve.

Marks: Yeah. Staff should refrain from interpreting the opinion.

Chair Chen: Yeah. But I don't think that goes as far as to say under no circumstances can you comment.

Suemori: Not you, him.

Chair Chen: Right.

Silva: Well, he won't be able comment on a advisory—

Suemori: The court decides to issue the decision—your opinion on your decision.

Lilly: That's judges, that's different. We're not judge here. This is a Ethics Commission whose responsibility among other things is to educate the public and other employees about ethics rules and our advisory opinions are geared not only educate the public but other employees of the City and to be used by us in the future when a similar matter comes up because our advisory opinions track prior opinions.

Amano: All those things are exactly the same as judicial opinions.

Suemori: Yeah.

Lilly: But for him not able to comment on—

Seumori: On his own opinion?

Lilly: On opinions issued by the Commission.

Suemori: What if he says, "I don't agree with that one."

Lilly: No, no he's bound by it.

Suemori: But what if he comments that he's not.

Amano: But to me comment sometimes is elaboration and that's not what you want when you issue an advisory opinion. It has to speak for itself.

Suemori: Yeah, I agree.

Lilly: When an advisory opinion is issued that has City wide concern that the media may want to have somebody explain. I mean, that's what they do.

Chair Chen: He couldn't clarify, he couldn't answer any questions.

Lilly: No. The opinion stands for itself, but the media goes to some knowledgeable person and says, "what does this opinion mean?" Can you give us—

Suemori: Can he just write it?

Lilly: Pardon?

Suemori: He wrote it, right?

Lilly: But the media is not only—They would like to have a person like in the visual one, like Keoki is over there-

Suemori: So if he said that, he issues an opinion, he gets—

Lilly: We issue the opinion.

Suemori: But his written it and so next comes up. So, Keoki comes up and he says, "well, what do you think about this?" It's now printed in the newspaper. Next time over is that (inaudible)?

Lilly: No.

Seumori: What is it?

Lilly: The opinion speaks for itself. Keoki doesn't want to just put up the opinion. He wants to have somebody explain it.

Amano: Why should it be—

Suemori: Why should it be explained?

Lilly: Because it got members of the public.

Amano: No. But why should it be our executive director?

Lilly: Why shouldn't it be?

Amano: Because we issued the opinion and it needs to stand within its own parameters.

Lilly: Right.

Amano: Otherwise down the road you got someone who will come and say, "here's the advisory opinion, yes, but here's what was added to it afterwards."

Lilly: No, it's not—

Suemori: Right.

Chair Chen: No, I—

Lilly: No, I don't buy that.

Amano: Why?

Lilly: Because the opinion is the one that governs. The comment to the public is merely explanatory, but—

Amano: Okay. We're going to have a difference of opinion on that.

Suemori: Yeah, we're going to have a difference of opinion.

EDLC Totto: Well, let me give you a simple example. Can I pick on Keoki? The Commission renders an advisory opinion, and if it is all interesting to the media or public, the next day I will get a

call saying, “well does this mean for people with the City?” So, I explain well, in future they won’t be able to do X, Y.Z. So, have I violated this?

Suemori: Is that an opinion, sir?

EDLC Totto: I don’t know—the opinion will probably say, it may or may not say that. I don’t to interpret your opinions other than to give people advice, right? Because that’s what we do. That’s part of our job is take whatever the opinion is and say, “okay, based on that opinion, is probably, here’s the advice for you.” And this facts may or may not be totally similar but we use the statutes and the charter and the prior precedent to do that. Whatever I say to the media has absolutely no legal affect at all. I mean, I can’t imagine, and if you thought it did then reprimand me or put whatever you think is appropriate.

Amano: It’s too late.

Milks: I have a question?

EDLC Totto: Can I finish. I’m sorry, I just want to finish the example here. So, if any reporter asks me, “what does this mean if for City employees. I’m asking you, under your policy is that something I can respond to or not?

Amano: No.

Chair Chen: Under the policy you can respond under any circumstances. I guess, I feel that defects one of our primary purposes which is to educate the public. If you can’t explain or anything or comment any way to media inquiries about an opinion, then I think that diminished our ability as a commission to educate the public on ethics. And, I think that’s a disservice.

Lilly: I agree.



EDLC Totto: Also we have a current policy, “Procedures for Handling Request for Advice and Complaints.” And that was passed in 2006. And part of it says, “the news media often asks for opinions whether the conduct of an individual violates the ethics laws.” The policy of the Commission is that no comment should be made to the media or third parties on matters that may come before the Commission as a result of a request for advice or complaint.

However, when asked by a member of the media, the Commission or staff may describe generally the ethics laws and issues that may be relative to the conduct of an officer or employee.

So, if we adopt this new news policy, I think we’d have to take a very serious look at the old policy that we’ve been operating under for several years.

Amano: Doesn’t appear to be contradictory to me.

EDLC Totto: Okay.

Marks: I had a question? In the staff’s policy and procedures regarding news releases, it says “a new release about formal advisory opinions, staff should reframe from interpreting the opinion.” So, what did you mean by that?

EDLC Totto: By that mean, I didn’t mean to that we couldn’t apply it to future issues or other examples, but that we should not be saying “what did the Commission—was there a split on this issue or why is it written it this way and not another way?” And that type of thing. Because that, I think that’s the part of the opinion that should never be discussed with anybody else. But in terms of saying, Mr. Z is found to have violated the ethics law and then taking that and later whether it’s the media or whomever asks, I think would be okay to say, “well, we had this case, it was very similar to what you were saying, so this is what I think would happen. But, of course, you want to go to the Commission for

formal opinion and so on.” So, I appreciate that point, maybe it should be more clarified as to what that was meant.

And, also I have to say, you know, “should” is a weasel word. And, there might be circumstances where the interpretation occurs. But to me whatever, if anybody asks, and I do get questions, where somebody will ask, “what is the reason that the Commission decided to that?” Or Or is the reason because they got another case coming down the line or they’re worried by Mr. So and So’s conduct or something like that.

That would be totally prohibited from my point of view. Whether any of that was discussed by the Commission, it’s not in the opinion, and I do think the opinion has to stand for itself, and the people should review the opinion if they want to get the full effect of what’s been stated by the Commission.

Lilly: If there was an opinion here as to a particular City employee that violated X, and the media asks you, “well, what does that mean for other employees? What does that mean?” And, you say, “well, my interpretation with the Commission did. I don’t know what the Commission will do in some future, but my interpretation based on what the Commission did in this case. If other employees engage in X, Y and Z, there may be ethics violations.” Now what’s wrong with that?

EDLC Totto: It’s kind of a bases of an informal advisor opinion anyway. That’s what I’m looking it.

Amano: I don’t find that to be interpretation.

Chair Chen: Okay. Well, that is certainly a comment. That’s a comment.

Lilly: He’s extrapolating.

Chair Chen: The way it reads now, he can't make any comment. He can't say anything.

Amano: Well, you know, all I can do is put out proposal. I do not have the experiences that Chuck has already had, so this is somewhat in a vacuum. I did it in the biggest broadest sense, because I believe that we need to have some parameters, and my background is in the judiciary. I prepared it, and it make sense to me. So, it's not like we're not out there educating the public, we will, but there is a process for it. We have training, we have other things we will be using, our advisory opinions in the trainings. Obviously, you can't just put it out there and expect the attendees to review the opinion. You're gonna need to say, "here was this case, this is what it did, and this is the prohibited activity. Is that a comment? Absolutely." But it is constrained to the actual parameters of the opinion itself. You're not going beyond that. There's always a danger.

Lilly: Okay. If I understand what you're saying, and I can understand that. His interpretation of what this opinion means as to this employee, the opinion speaks for itself.

Silva: Right.

Amano: Or even future conduct.

Lilly: But, if you apply this, my interpretation of this, and it's certainly subject to future facts and whatever the Commission may do, (inaudible), but my interpretation is if other employee, City employees engage in these sorts of conduct, they can have an ethics violation, right? And you're saying that's not an interpretation.

Amano: I'm saying it's precedence, and he's informing them, 'here's the precedence. This is what it stands for.'

Lilly: Okay. Maybe to shorten this, I recommend that if you take the two recognizing what we're talking about in terms—Because, I think the way it's written now judge is, I think it's ambiguous of whether what I just described was interpretation.

Amano: Okay. But right now we have nothing. So—

Lily: And it's more like an application. What I'm saying is an application not an interpretation.

Suemori: If you were to send this back to be tweaked,, could we do something with that word “should”—

Chair Chen: Where?

Suemori: In No. 1 staff. Chuck corrected it's a weasel word.

Lilly: Should refrain.

Suemori: I don't care what word you use, but don't use “should” because “should” is a useless word.

Chair Chen: Well, I guess—

Suemori: Let him decide, figure it out.

Chair Chen: Well, are we working off of Commissioner Amano's—

Lilly: Take the two, recognize what the concerns are. I hear that the Commission doesn't have a concern about you taking an opinion and explaining how it might apply potentially to other employees, right?

Silva: That's what he does at his training.

Marks: Sure.

Lilly: For me, I don't want you constraining from being to do that, but I think what the judge is telling me is they don't want you to go too far in interpreting what this particular opinion is because it speaks for itself.

Amano: We're also dealing with different formats. It's one thing to deal with a room full of trainees. It's a whole another thing to get all the media and say this thing and then it's subject to your comments are subject to further interpretation by whoever else. And, I don't think it's beyond, you know, possibility, if not probability that a lawyer is going to grab the whole thing and say, "this is how this opinion ought to be interpreted." And, you could make a mistake. Once it's gone it's gone.

Suemori: And, I know the attorneys that would.

Lilly: I wonder if there's any (inaudible) of the public who have any comment? Comments?

Chair Chen: Commissioner Silva had a—

Silva: Let's see his interpretation first. He's with the media.

Mr. Kerr: Hi, I'm Keoki Kerr from Hawaii News Now.

Chair Chen: I had no idea.

Silva: We didn't recognize you.

Mr. Kerr: I didn't actually come here to testify, but I did feel compelled to speak about it because we've been dealing with Chuck for many years. And, I think what it comes down to is trust. I mean, you, as Commissioners have hired somebody to be the executive director. He is not a Commissioner, and sure what he says is not the final decision, the written decision. He is in so many ways the very important bully pulpit, if you will, for the Ethics Commission, which is frankly beleaguered in staff and in

budget and sometimes doesn't have the teeth that it would like to have. Yet, I see the important education role is to allow him the leeway to talk about these issues as Commissioner Lilly talked about broadening the month.

So, it's not just about Mr. Jones' case we're talking about, right? Often what we're interested, we may be interested because Mr. Jones is a high ranking City official and that's juicy and interesting, but it has a broader effect that Mr. Jones got in trouble here, but the important thing is that all City employees cannot do this on the job or whatever the issue is. And that's often why we need that kind of interpretation and that is really fulfilling. I think the mission of this Commission is to raise the awareness of ethics in City government and for the citizens of Oahu and by giving us the leeway to talk to him and expand slightly not intruding or obviously reinterpreting or misinterpreting a decision but he's broadening it and making, bringing it down to earth, because that's what we're trying to do, right?

Sometimes these opinions, and I've covered many of them for many years are very detailed. They're very, very lengthy and we have to boil it down to a very simple to understand, you know, decision, right? And, so that's often why we go to Chuck because sometimes they're legalistic. They're long and involved, and we want somebody to boil it down, and say, "why should we care? Why should the public care about this decision, Chuck? What effect does this going to have now? What does it mean that bus drivers are going have to do from now? And whatever the issue might be. And that's where, I think it serves the greater purpose of this Commission is to help us boil these cases down to important nuggets of information that we want the tax payers to know, and you want those public employees to know that this is the way their conduct is, they must conduct themselves or they must not conduct themselves. So, I think you have to be careful about putting all these constraints on your executive director.

You know, frankly, he has been, he's always been extremely, in spite of my record of trying to grab all kinds of things when you're not supposed to tell me, he's been very, very good about, you know, explaining I can't talk to you about it. This is an active investigation or whatever the case may be. We have other ways of finding out different things because people are brought in for questioning or whatever. We may do our own independent work. But the fact is Chuck always make sure everyone's rights are protected and the process is protected, and that's very important, you know.

But also it's important that you generate, I think, you generate discussion on these issues because, I think from covering government for many years, you know, a lot of people tend to look at the other way. And the important thing is that we don't look the other way when there's a problem and we address them. And if the executive director is allowed to do that without these constraints, worry that, "oh, no, am I going come a foul of this restriction?" It's hard enough to get us really these days, there's not enough coverage of government, and ethics and government, I think. And, frankly, the things I'm hearing about in this version, it just makes me scared it's going to even harder for us to get those kind of quotations if executive director is put under these constraints. It's like "oh, no, I'm going to be directed to an opinion and I have to quote some 27-page thing, really?" That's not really what's going on these days, right? Especially in broadcast media. You want somebody to try interpret a real human, not just a document. You know, this is not a court. This is the supreme court. This is not the ICA, this is not the circuit court. I know a lot of you have that experience but, you know, it's a different ball of wax. As Commissioner Lilly said, this is not a court. And his decisions are not going to be appealed to the Supreme Court, and he's merely helping the public to understand. And, I think that's really important, so I would caution you about any kind of restrictions.

But, I thank you. I don't know if you have any questions?

Chair Chen: Thank you very much.

Lilly: Does anybody here have any concerns about the way in which Keoki has expressed, the kinds of things the media—To me, getting the information out if it is valuable when the media covers an opinion that may just be sterile opinion that we file away and no employee ever sees it because it's not out there other than may be in an ethics training, but if it's important enough that the media is interested in, now it gets publication out to a lot of employees maybe on the line and may not stop violating ethics because they heard that "X" got dinged for what I'm doing.

Marks: Yeah. I have a comment, and, I think it's a follow-up to what we discussed last meeting and that is these advisory opinion should not be 100-page supreme court ruling they ought to be made under shorter understandable in English so that the average City employee doesn't have to read a tone to know what it is, doesn't have to have legal training to understand it, and that if it is so lengthy then the Commission ought to have a press release with it that's a paragraph or something so that everybody understands and it should be done at once and make things more understandable for the employees of the City and County.

Mr. Kerr: I think they have. I mean, that's what they do especially for some large cases, you have done that, right, in the past. And that is very helpful and there will be that sort of general interpretation that doesn't stray from the legal (inaudible) or whatever of that much longer decision because as you know the layers on the other side often throw all kinds of things in there, and so they do have to be addressed and sometimes it's not just that they're wordy, these guys love to write many pages. All these issues and these smoke screens brought up by people trying to defend strange behavior by politicians or by City employees.



And, so we do appreciate it. That's a great idea, but they are doing that already for some major cases they have done that. For a lot of routine cases, I don't think they do that, but they will send out a news release which does summarize the basic facts and sometimes does have a quotation into, I believe, from Chuck talking about the greater implications which does help us immensely and, you're right, helps boils it down for the public employees. Because that's what it is about raising awareness and letting them know, "hey, we're out there." You know what, we're on to this and this is not to be allowed. And you better think twice if you're doing the same kind of thing, I think that's important for people to know that you guys are all here. You give so much of your time. They're all volunteers. This is a lot of work.

Amano: What, we volunteer?

Mr. Kerr: But we want your, all your hard work, all the hard work that you do for your bottle of water over there. Right, we want to get out and get noticed as much as possible. I don't think, we, the media covers these issues enough because there aren't enough resources anymore. There's aren't enough reporters to do these kind of things.

So, that's why, again, any kind of awareness that you can bring which involves new releases you talked about, but also involves giving us access and giving us somebody to talk to us to help us interpret this. And, also to help us. You know when we're wrong because I've had some great discussion with Chuck where I go, "oh, well, this is clearly. Oh, this is so sleazy, it's terrible." And, he'll say, "wait a minute, you know, you have to take all this into consideration here and, you know, there could be a possible explanation, and we've had this kind of thing happen before. So, he really helps us, you know, to make the story fair and accurate and not just sort of go after somebody unfairly too.

I've had those kind of discussion with him before because of his lengthy experience in this issue. It's been tremendous, and I would be very sad if that kind of access. If he was so scared of even talking to me on background on an issue. Because I feel like my stories wouldn't be as good, as complete and as fair without that kind of give-and-take which is really important. But, I'll stop talking now. I appreciate your time.

Amano: Well, I appreciate your comments. Very, very helpful.

Mr. Kerr: Yeah, sure. Thank you. Thank you all for your service and for all you do. So, we really appreciate Ethics Commissions all over state and county. And there's one meeting today with Billy Kenoi over on the Big Island.

Lilly: The Ethics Commission apparently deferred.

Mr. Kerr: Thank you, guys, but it's nice to talk to you. Good to see you all.

Silva: Going back to where I was (inaudible). I come from a more religious background, so consequently I know about all of the interpretations so to speak of scripture or whatever. There's so many, and so the same thing here we hold here as an Ethics Commission. We should be holding the public's trust.

And, if you read through media newspaper, TV, whatever today, the general public has a kind of a low priority on government right now. And, whether it's national or local, state, whatever. And, so, basically our job, therefore, our main purpose is to improve, maintain the public's confidence in government officials and employees. That's basically what we need to do. Just looking at situations as they come along, whether this is right or whether this is wrong.

I mean, there's all kinds interpretations as law (inaudible). Because you're basically lawyers and attorneys and have you, judges. But

basically that's how we have to look at is what will the public think about what we conducted here today.

Is it a good thing or is it a bad thing. And sometimes things get shaded gray, right?

Suemori: What I was going to say, you know, follow-up to Commissioner Marks is that it was set last month when we got an advisory opinion. We got sort of like bogged out, the purpose of the advisory opinion and, I think—that's how we got out of this.

Chair Chen: That was in executive session.

EDLC Totto: Yeah. I think it's okay to talk about it generally.

Suemori: We're just talking about general.

EDLC Totto: Yeah, without the—

Suemori: And that's right. So then what happens is we wanted to have—if we were going to use an opinion for the public then we actually really need to make it a (inaudible) as opposed to 40-page, 80-page whatever. And if actually you know you can't say anything in five pages, don't say anything.

Silva: Can't say nothing good about—

Suemori: Yeah. You got to be real clear, and I don't know because I think there was a review of what is the purpose of an advisory opinion. We're not doing that now, but how we're going to communicate that to be fair to everybody, which is the parties, the public, the media and everything. And that is a challenge of how you draft and how you write. And it takes a lot of thoughtful word use. And, so we were just kind of—that opinion was not the longest but it was long, that's all.

Lilly: I think he's cut in half.

Suemori: So, now we're at 24.

Amano: I think it's five or six.

Chair Chen: So, we had a suggestion to look at 3<sup>rd</sup> version addressing some of the issues that were raised today and to reflect—

Suemori: The discussion.

Chair Chen: ...the discussion; yes. So-

Amano: For the record, I'm not married to any of this except the procedure of some kind with some parameters. I think it's a good idea to look at all the concepts, put something out there that's workable incorporating Mr. Kerr's concerns as well, which are equally important. I ask that we keep the policy that I articulated which mirrors exactly what our achievement is. I took it right off pretty much of our website. So, I know we should have something to guide us in our working with the media. If you make a mistake or we make a mistake of some kind, it's very, very difficult once it's out.

So, if we have a process that we can follow that would be helpful, and I don't have any problem with changing this so that it gives the leeway that's necessary to do the job.

Chair Chen: Okay.

Suemori: I was just going to say if you're going to have policy, have a policy or don't have a policy and call it a purpose. And the staff one, it says we have a policy and there's never anything else, but there is a purpose so we always mention it. So absurd.

Amano: But, thank you for at least hearing it out.

Chair Chen: Okay. So, do we need a motion to move it forward that way or—

**Amano: I think you table this motion, and we'll take it up at the next meeting.**

Chair Chen: Okay.

Lilly: You got enough guys?

EDLC Totto: Yes.

Chair Chen: Well, thank you. **We will need to now have a motion to move into executive session. Can I have a motion to move into executive session.**

**Silva: So move.**

**Lilly: Second.**

**Chair Chen: Okay. All in favor?**

**All Commissioners: Aye.**

**EXECUTIVE SESSION DISCUSSION REGARDING ITEMS  
V.A. AND B. HAVE BEEN REDACTED**

Chair Chen: Okay. All right. Can we have **a motion to move back into open session.**

**Marks: So moved.**

**Amano: Second.**

**Chair Chen: All in favor?**

**All Commissioners: Aye.**

Chair Chen: So, now we're back in open session. I'm just going to report that we approved and adopted an advisory opinion [as to Item V.B.].

So, now can I have a **motion to close today's meeting.**

## **VI. ADJOURNMENT**

**Amano: Move to adjourn.**

**Silva: Second.**

**Chair Chen: All in favor?**

**All Commissioners: Aye.**

Chair Chen: Thank you.